

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Petition For Ruling That General) WC Docket No. 17-____
Communication, Inc. Be Treated As the)
Incumbent Local Exchange Carrier In the ACS)
of Anchorage, LLC Study Area)
Pursuant to Section 251(h)(2) of the)
Communications Act)

ALASKA COMMUNICATIONS SERVICES

PETITION FOR RULING UNDER SECTION 251(h)(2) OF THE COMMUNICATIONS ACT

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Executive Summary

The market-opening provisions of Section 251 of the Communications Act adopted in 1996 were intended to lead to the loss of market dominance by incumbent local exchange carriers (“ILECs”) and the rise of competitive alternatives. The Act even anticipated that a competitor one day would take the place of the “incumbent” for purposes of Section 251. That day has arrived in Anchorage, Alaska. In Anchorage, consumers enjoy full-blown facilities-based competition and an array of competitive choices. The largest competitor is General Communication Inc. (“GCI”), a company that offers local telephone service in substantially all of the study area of ACS of Anchorage, both through traditional landline local exchange facilities and through functional equivalents, including its broadband-based voice-over-Internet-protocol service. With more customers and more facilities than ACS of Anchorage, GCI is better situated to be treated as the ILEC for purposes of Section 251. Accordingly, the Commission should declare GCI to be the ILEC for purposes of Section 251, and declare ACS of Anchorage to be non-dominant and no longer an ILEC for the same area, upon the effective date of that order.

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ALASKA COMMUNICATIONS SERVICES
PETITION FOR RULING UNDER SECTION 251(H)(2) OF THE COMMUNICATIONS ACT

Pursuant to Section 251(h)(2) of the Communications Act of 1934, as amended,¹ Alaska Communications Systems Group, Inc. (“Alaska Communications”) hereby petitions the Commission for a ruling that General Communications Inc. or its relevant subsidiary (“GCI”) shall be treated as the sole incumbent local exchange carrier (“ILEC”) in the ACS of Anchorage study area going forward, and that ACS of Anchorage LLC, which no longer is a dominant carrier, shall cease to be treated as an ILEC.² Grant of this petition will serve the public interest, convenience and necessity.

I. INTRODUCTION & LEGAL FOUNDATION

Under the Communications Act, ACS of Anchorage operates as the incumbent local exchange carrier (“ILEC”) in a study area sanctioned by the Regulatory Commission of Alaska

¹ 47 U.S.C. §251(h)(2). The entirety of Section 251(h) is provided at note 3, *infra*. The Commission also has broad authority to act on a petition for declaratory ruling to clarify any legal matter within its jurisdiction. *See* 47 C.F.R. §1.2 (the Commission may, on its own motion or in response to a motion, issue a declaratory ruling to terminate a controversy or remove uncertainty). However, Section 251(h) specifies that the Commission may “provide for the treatment of a local exchange carrier” as an ILEC “by rule.” *See infra*, note 3.

² ACS of Anchorage, LLC is the ILEC owned and operated by Alaska Communications that serves the Anchorage study area, as defined by the Regulatory Commission of Alaska (“RCA”). A depiction of the study area is provided at Exhibit A. It is available from the RCA web site: <http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=45a47855-662d-4ded-ac0d-a309988c8482>.

(“RCA”). The FCC may name another carrier as the ILEC if that other carrier occupies a “comparable” place within the market for telephone exchange service in an area served by the ILEC, and has “substantially replaced” the ILEC in that area, where such a change is consistent with the public interest, convenience and necessity and the purposes of Section 251 of the Act.³ As Alaska Communications will demonstrate herein, GCI does occupy a place within the market for telephone exchange service in the Anchorage study area that is comparable to, and even superior to, that occupied by the ILEC, as described in Section 251(h), and GCI has substantially replaced ACS of Anchorage as the predominant local exchange carrier in the study area. Further, Alaska Communications will demonstrate that the public interest and the Commission’s pro-competitive goals under Section 251 will be better served by treating GCI as the ILEC than

³ Section 251(h) provides:

DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER.--

(1) DEFINITION.--For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that--

- (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and
- (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or
- (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

(2) TREATMENT OF COMPARABLE CARRIERS AS INCUMBENTS.—The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--

- (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);
- (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and
- (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

by continuing to regulate ACS of Anchorage as the ILEC. Effective upon the date of the FCC's decision, ACS of Anchorage correspondingly should be deemed neither an ILEC nor a "dominant" carrier in the provision of any interstate telecommunications services in the Anchorage study area.

The Commission has had occasion to interpret Section 251(h)(2) only a few times. The Commission first applied the statutory test to a study area in the U.S. territory of Guam, where a single carrier that failed to meet all of the specific requirements of the "ILEC" under the Communications Act was effectively acting as the ILEC for all practical purposes;⁴ and the Commission granted a second petition in the rural Terry, Montana exchange where a neighboring CLEC won roughly 80 percent market share from Qwest, the ILEC.⁵ In the latter case, the Commission declared not only that the CLEC should be treated as the ILEC for purposes of Section 251 in the exchange area where it had substantially replaced Qwest, but also that Qwest should be declared non-dominant in the same exchange.⁶

GCI has been characterized as a competitive local exchange carrier ("CLEC") in Anchorage, but in fact it occupies a position in the local telephone exchange service market that

⁴ *Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act, Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, Declaratory Ruling and Notice of Proposed Rulemaking, 12 FCC 2d 6925 (1998) ("Guam Telephone Authority").

⁵ *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It To Be an Incumbent Local Exchange Carrier In Terry, Montana Pursuant to Section 251(h)(2)*, 21 FCC Rcd 11506 (2006) ("Mid-Rivers").

⁶ In its third ruling under Section 251(h)(2), the Commission denied the requested finding because the CLEC in that case was insufficiently facilities-based. *Petition of Channel Islands Tel. Company for Order Declaring It an Incumbent Local Exchange Carrier in the Channel Islands, CA Pursuant to Section 251(h)(2) of the Communications Act of 1934, as Amended and Section 51.223(b) of the Commission's Rules*, 26 FCC Rcd 17024 (2011) ("Channel Islands"). As will be demonstrated herein, GCI has ample facilities of its own and is, in fact, the dominant service provider in the ACS of Anchorage study area.

is comparable to the position occupied by ACS of Anchorage, and GCI has “substantially replaced” ACS of Anchorage in that study area. Indeed, GCI’s facilities-based presence substantially matches that of ACS throughout the study area, while GCI (through commonly-owned CLEC and broadband affiliates) offers a greater diversity of facilities-based services, including voice and broadband services, VOIP, video, and high-capacity business data services.

Further, treating GCI as the ILEC and the dominant local exchange carrier in the Anchorage study area is consistent with the public interest, convenience, and necessity and the pro-competitive purposes of section 251 of the Act. Indeed, it is more appropriate to treat GCI as the ILEC than to continue treating ACS as the ILEC. The Regulatory Commission of Alaska (“RCA”) already has classified ACS of Anchorage as non-dominant for some intrastate services, and determined that ACS of Anchorage no longer is the carrier-of-last-resort (“COLR”) in the Anchorage study area.⁷ ACS of Anchorage no longer provides unbundled network elements (“UNEs”) to any CLECs pursuant to agreements governed by Sections 251 and 252 of the Communications Act.⁸ Rather, it is GCI that has the advantage in facilities-based local exchange service, to the extent that service remains a separate offering distinguishable from broadband or other advanced service offerings.

In this petition, Alaska Communications requests that the Commission relieve ACS of Anchorage of “ILEC” classification in its provision of telephone exchange services and exchange access services in the Anchorage study area. The Commission should find that ACS is non-dominant in its service area, and treat GCI as the ILEC going forward. This relief is

⁷ See R-08-003, Order No. 8 (RCA rel. August 18, 2010) at 26.

⁸ ACS of Anchorage provides a small number of local loop UNEs to GCI pursuant to a privately negotiated agreement.

consistent with the Commission's precedent-setting order treating Mid-Rivers Telephone Cooperative as the ILEC in the Terry, Montana exchange.⁹

While in its *Mid-Rivers* decision, the Commission considered only whether to treat a new entrant as the ILEC in a single exchange, Alaska Communications will demonstrate below that the statute does not mandate that this analysis be confined to the exchange level, nor would the goals of the statute be well served by requiring such analysis in the present case. Rather, Alaska Communications maintains that the appropriate "area" for purposes of Section 251(h)(2) is the study area currently served by ACS of Anchorage as the ILEC. As the Commission noted in 2006, the *Mid-Rivers* decision is not dispositive as to the appropriateness of performing the analysis required under Section 251(h)(2) on an exchange area basis.¹⁰ It was reasonable in that case, where the scope of the petition was limited to a single exchange, with relatively few customers, but it would not serve the public interest here.

II. THE PUBLIC INTEREST, CONVENIENCE & NECESSITY REQUIRE THAT GCI BE TREATED AS THE ILEC IN THE ACS OF ANCHORAGE STUDY AREA

A. GCI's Position in the Telephone Exchange Market Served by ACS of Anchorage Is "Comparable To" That of the ILEC

The first question to be decided by the Commission is whether the CLEC "occupies a position *in the market* for telephone exchange service *within an area* that is comparable to the position occupied by" an ILEC, and the appropriate definitions of the "market" and the "area," as used in Section 251(h)(2)(A) of the Act.¹¹

⁹ Nothing in this petition is intended to affect ACS of Anchorage's eligibility for high-cost support under the Connect America Fund program or its status as an eligible telecommunications carrier ("ETC") under the Communications Act and Part 54 of the FCC's rules.

¹⁰ See *Mid-Rivers*, *supra*, n. 31 ("We do not address the question of what type of local exchange market analysis would be appropriate for purposes of section 251(h)(2) in an area with substantially more business access lines or total access lines").

¹¹ 47 U.S.C. §251(h)(2) (emphasis added). Cf. *Mid-Rivers*, ¶18 ("Mid-Rivers occupies a

1. The “market for telephone exchange service” includes VoIP and broadband services reasonably substitutable for telephone exchange service. The most logical reading of the “market for telephone exchange service” is the collection of services that are defined in the Communications Act as “telephone exchange service” or are reasonably substitutable therefore. The statute defines telephone exchange service as:

(A) A service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or

(B) A comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.¹²

When Section 251(h)(2)(A) refers to another carrier occupying “a position in the market” for this service, it logically assumes that the “market” is broader than a “service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area” – an ILEC-centric definition. The “market” for this purpose includes any service which, in the view of customers, reasonably can be considered a substitute for such exchange-level ILEC telephone service, such that the pricing, quality or features of one service will influence the pricing, quality or features of the other.¹³ In today’s environment, this includes

market position comparable to that of a traditional legacy incumbent LEC in the Terry exchange”).

¹² 47 U.S.C. §153(47).

¹³ The Commission frequently considers a product or service “market” to include all services reasonably deemed substitutable by customers. *E.g., Broadband Data Services In an Internet Protocol Environment*, WC Docket No. 16-143, Report and Order, FCC 17-43 (rel. April 28, 2017), ¶19 (“we distinguish product markets by generally looking at whether various services are reasonably interchangeable, with differences in price, quality, and service capability being relevant”) (the “BDS Order”). *See generally Motorola, Inc.*, 10 FCC Rcd 7783, n.42 (Wireless Tel. Bur. 1995) (“The relevant product market is the ‘line of commerce’ within which a service

not only circuit-switched plain-old telephone exchange service (“POTS”) but also voice-over-Internet-protocol (“VOIP”) service, and other broadband-based services that can be used in lieu of telephone exchange service for similar types of communication. Although broadband-enabled VOIP and similar offerings may be based on technologies that are capable of providing more than telephone exchange service over a circuit-switched network, they nevertheless are capable of providing a reasonable substitute to POTS and thus should be considered in the telephone exchange service market.¹⁴

Even if the Commission were to consider only GCI’s CLEC operations, and not its affiliated cable broadband services, the Commission still would find that GCI occupies a position in the market for telephone exchange service that is “comparable” to the position occupied the ILEC, ACS of Anchorage. However, only about ten percent of Anchorage residents purchase stand-alone telephone exchange service today.¹⁵ Far more residents purchase voice as part of a package that includes broadband service, giving them additional choice for sending and receiving local exchange-type communications.¹⁶

Whether the market includes only voice or more advanced offerings capable of delivering voice as well as other services, the Commission will find that GCI provides a competitive

or product is considered interchangeable with a reasonable substitute, given consideration of price, use, and quality”), citing *Brown Shoe Co. v. United States*, 370 U.S. 294, 324-25 (1962); *United States v. FCC*, 652 F.2d 72, 97 (D.C. Cir. 1980); *General Electric Co.*, 4 FCC Rcd 8207, 8208-09 (1989).

¹⁴ See Declaration of Beth Barnes, attached hereto as Exhibit B, ¶3. See generally *BDS Order*, ¶21 (“A product that substitutes for another demonstrates a possibility that consumers will purchase the competing service of a competitor, including a potential entrant. Consequently, we consider providers with facilities used to supply one service that could be used to provide another”), citing U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, § 5.1 (Aug. 19, 2010).

¹⁵ Barnes Declaration ¶5.

¹⁶ *Id.*

offering for every exchange service offering of Alaska Communications, to all types of customers, and that customers find such offerings reasonably substitutable. (Indeed, with its CLEC and cable broadband networks combined, GCI offers a greater variety of services and service bundles than ACS of Anchorage is capable of offering.)¹⁷ And GCI repairs and maintains its own networks.¹⁸ Therefore, the Commission should find that GCI occupies a position in the market for telephone exchange service that is “comparable” to the position occupied by an ILEC as defined in Section 251(h)(1).¹⁹ As shown below, the geographic “area” within which this is true is the ACS of Anchorage study area.

2. *The ACS of Anchorage study area is an appropriate geographic area for purposes of Section 251(h)(2).* The second question to be addressed by the Commission is whether GCI occupies a position comparable to the position occupied by ACS of Anchorage in the market for telephone exchange services “within an area.”²⁰ Logically, the “area” under Section 251(h)(2)(A) must be the geographic space within which the market position of the CLEC and

¹⁷ Barnes Declaration ¶¶4. Moreover, GCI should be treated as the ILEC whether the Commission analyzes the product market as all local exchange services or separately analyzes business and residential services. *Id.*, ¶¶9.

¹⁸ E.g., GCI 2016 Annual Report at 6-7 (description of GCI owned and operated facilities), available at: <http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-sec>. See generally *Mid-Rivers*, ¶¶12 (finding that the scope of the CLEC’s network, its superior quality, and the CLEC’s maintenance and repair of that network, all were relevant to finding that the CLEC “occupies a position comparable to that of the ILEC” in the relevant geographic area).

¹⁹ Alaska Communications urges the Commission to find that the “market” in the case of Alaska’s price cap study areas is intended to be viewed as a single comprehensive service market for local exchange services, rather than divided into sub-markets such as residential and business. Nothing in the statute suggests that the “market” should be viewed as anything other than all services that reasonably compete with telephone exchange service. Nevertheless, should the Commission determine that such sub-markets must be analyzed, it will find that GCI occupies a position in each sub-market that is comparable to that of Alaska Communications, with a slightly greater share of residential customers than of business customers. Barnes Declaration ¶¶4, 9.

²⁰ 47 U.S.C. § 251(h)(2)(A).

ILEC are to be compared. The Commission has broad discretion under the statute to define the meaning of “area” for purposes of Section 251(h)(2). While in a prior case the Commission was asked to review comparability within a single exchange area,²¹ nothing in the Commission’s precedent or the language of the statute limits the Commission to consideration of comparability between CLEC and ILEC within a single exchange area. Congress easily could have specified “within a local exchange area” but did not.²² Rather, the statute generally requires consideration as to whether another carrier occupies a position in the market for telephone exchange service that is comparable to the ILEC’s position “within an area,” an ambiguous phrase leaving the Commission broad discretion as to the area to be evaluated in any particular case.²³

Alaska Communications requests that the Commission examine for this purpose the Anchorage study area as a whole. This is the area in which ACS has duties as an ILEC under state and federal law, including duties under Section 251 of the Communications Act. Prior to 1996, the study area was approved by the RCA as the monopoly territory of the ILEC, but today competition has taken hold in substantially all of the ACS of Anchorage study area. Within this area, telephone exchange service customers today have a choice among service providers *and* the service providers have a sufficient customer base to find an effective market for their offerings.²⁴ Indeed, the RCA has approved market entry and interconnection arrangements for a number of

²¹ *Mid-Rivers* ¶9.

²² *Accord, Mid-Rivers* ¶10 (“The use of this broad, general language gives the Commission ample flexibility to interpret the term ‘area’ as encompassing a single local exchange in the present circumstances given the purposes of the Act”).

²³ *E.g., Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 31 FCC Rcd. 9074, ¶11 (2016).

²⁴ *See Barnes Declaration* ¶¶6-8.

CLECs in the study area.²⁵ Based on these facts, FCC and judicial precedent support a finding that the study area constitutes the appropriate geographic “market.”²⁶

Alaska Communications respectfully requests that the Commission here review whether GCI occupies a position in the market for telephone exchange service within the ACS of Anchorage study area, taken as a whole. As will be demonstrated below, GCI meets the requirements for ILEC treatment throughout the ACS of Anchorage study area.

3. *Finding that GCI occupies a position in the telephone exchange service market that is comparable to the position occupied by an ILEC is consistent with FCC precedent.* The Commission has determined that to “occupy a position that is comparable” to that of the ILEC, a CLEC need not have entirely supplanted the ILEC in the market, nor have deployed facilities serving 100 percent of the customers in the relevant exchange areas.²⁷ Rather, the Commission considers the totality of the circumstances, including whether customers consider the types of services offered by the CLEC to be reasonable substitutes for those of the ILEC, and whether the quality of the CLEC’s facilities appear comparable, or even superior, to those of the incumbent.²⁸ The CLEC’s position in the study area *need not be identical* to that of the ILEC in order for the Commission to find that the CLEC occupies a *comparable* position in the market.²⁹

²⁵ Barnes Declaration ¶7.

²⁶ *E.g.*, *BDS Order* ¶19 (“we look at both supply and demand substitution”), citing *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 359 (1963) (finding the relevant geographic market to be “the ‘area of effective competition . . . in which the seller operates, and to which the purchaser can practicably turn for supplies’”) (quoting *Tampa Elec. Co.*, 365 U.S. at 327).

²⁷ In *Mid-Rivers*, the CLEC had garnered 85 to 93 % of the access lines in the area, “in most cases” (but not all) over its own facilities, but the ILEC maintained a facilities-based presence in the area. *Mid-Rivers* ¶12.

²⁸ *Id.*

²⁹ *See id.* ¶¶12-13.

Comparability requires substantial similarity in scope and value. Such is the case with the telephone exchange services of GCI and ACS of Anchorage in the latter's study area.

GCI indeed occupies a comparable position to that of ACS of Anchorage in the ILEC study area of Anchorage, providing the same or reasonably substitutable services, and more, to the vast majority of locations in the study area, substantially relying on its own network and its own operations.³⁰ In 2015-2016 proceedings before the RCA, when ACS of Anchorage provided local exchange service to over just 40,000 lines, GCI acknowledged that it provided local exchange service over to 57,400 lines in the Anchorage study area (49,800 over its own facilities, and 7600 over facilities leased under an agreement with ACS of Anchorage).³¹ At the time, GCI said *all* locations served by its facilities also had access to broadband, whereas only 37% of ACS of Anchorage locations were capable of broadband.³² Through its traditional wireline CLEC network and its extensive broadband facilities, GCI has extended its own network to 99 percent of customer locations in the study area, and has deployed more fiber and fiber-fed facilities than ACS of Anchorage.³³ As noted above, GCI provides all of the telephone exchange services offered by ACS of Anchorage, and more.³⁴

Similar to the facts in *Mid-Rivers*, while the ILEC maintains its own presence in the area, GCI has surpassed the ILEC in the scale, scope and capability of its facilities. Today, GCI operates on larger scale and scope than the ILEC, and itself claims to be “the largest telecommunications provider in Alaska with more than 2,200 employees and almost \$1 billion in

³⁰ Barnes Declaration, ¶¶4, 6-8.

³¹ RCA Docket U-15-139, Agreement Between GCI and ACS-AN Providing Data And Withdrawing Request for Further Data from GCI, at 3 (dated March 7, 2016).

³² *Id.*

³³ Barnes Declaration, ¶6.

³⁴ See *supra* note 17 & accompanying text.

revenues.”³⁵ In addition to wireline voice and broadband-enabled networks that equal or surpass those of the ILEC in scale, scope and capability, GCI offers video programming over broadband, and narrowband and broadband mobile wireless voice and data services, none of which are offered by the ILEC.³⁶ GCI operates the state’s largest cable television network, multiple broadcast television stations, and the state’s second-largest wireless network. The Commission should find that GCI “occupies a position” in the market for telephone exchange service that is “comparable” to the position occupied by the ILEC throughout the ACS of Anchorage study area.

B. GCI Has Substantially Replaced ACS of Anchorage in the ILEC Study Area

Having determined that GCI occupies a position comparable to that of ACS of Anchorage in the telephone exchange market in the Anchorage study area, the Commission next must decide whether GCI has “substantially replaced” ACS in that area within the meaning of Section 251(h)(2)(B) of the Act.³⁷ To have “substantially” replaced the ILEC does not require 100 percent substitution. Referring to the plain English definition of “substantial,” the Commission has found replacement within this definition where *most* customers were served by the new entrant, *mostly* over its own facilities.³⁸ The Commission also considers whether the CLEC relies on the ILEC or does its own network maintenance and repairs.³⁹

³⁵ E.g., GCI, “Executive Team,” *available at*: <https://www.gci.com/about/executiveteam> (visited June 6, 2017).

³⁶ E.g., GCI 2016 Annual Report at 5 (description of GCI wireless facilities), *available at*: <http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-sec>.

³⁷ 47 U.S.C. §251(h)(2)(B).

³⁸ *Mid-Rivers* ¶15 (Mid-Rivers Coop had gained over 80 percent market share and deployed extensive (though not universal) network facilities in the Terry exchange).

³⁹ *Id.* ¶

The Commission's precedent does not require the CLEC to have an exclusive facilities-based presence in the relevant area. The historic ILEC remains obligated under Sections 201 and 202 of the Communications Act. It cannot be expected to have withdrawn its facilities that are used to serve customers.⁴⁰ Nevertheless, the Commission may declare the CLEC to merit treatment as the ILEC under section 251(h)(2) when the CLEC has deployed its own facilities, is serving the majority of customers, and thus has substantially replaced the ILEC in the relevant geographic area.⁴¹

By all measures, GCI meets this test. As noted above, GCI has garnered 60 percent of the wireline telephone exchange service subscribers in the ACS of Anchorage study area.⁴² It has deployed broadband in census blocks covering 99 percent of the residents (and subscriber

⁴⁰ *Id.* ¶¶13, 15 (Qwest continued to serve between 10 and 20 percent of customers at the time that Mid-Rivers was declared the ILEC). *See generally* 47 U.S.C. §§201(a).

⁴¹ *See Channel Islands, supra*, citing *Guam Telephone Authority* and *Mid-Rivers*.

⁴² For this purpose, it appears appropriate to consider only wireline competitors. In neither *Guam Telephone Authority* nor *Mid-Rivers* did the Commission consider wireless services in defining the market or measuring market share. The Communications Act's definition of "local exchange carrier" explicitly excludes "a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term," 47 U.S.C. §153(32). In the *Local Competition Order*, the Commission declined to include commercial mobile radio service ("CMRS") carriers in the definition of local exchange carriers. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket N0. 96-98, First Report and Order, FCC 96-325, 11 FCC Rcd 15499 (1996), ¶ 1004 (subsequent history omitted). Rather, the Commission found that the interconnection and unbundling obligations imposed on LECs by Sections 251(b) and (c) of the Act should not apply to CMRS providers. *Id.* ¶¶ 1005-06. At this point, the Commission has not revisited that conclusion. It is thus unnecessary to consider CMRS carriers in evaluating the question of whether GCI has "substantially replaced" the ILEC in Anchorage. If the Commission were to include CMRS in the market for local exchange service, for example based on its 1996 finding that CMRS is "comparable service" to telephone exchange service and "may become a true economic substitute for wireline local exchange service in the future," *id.* ¶ 1013, it should aggregate and count the market shares held by all of GCI's wireless, broadband, VOIP, and POTS affiliates in the service area. Doing so would lead to the same conclusion, that GCI holds a position superior to that of the ILEC in the Anchorage service area.

lines) in Anchorage.⁴³ GCI also operates two undersea fiber-optic cables linking the Anchorage study area with the contiguous states and the Internet access points nearest to Alaska.⁴⁴ GCI has access to substantial sources of income from unregulated cable rents. GCI performs its own network maintenance, repairs and upgrades. It operates its own back-office systems. At the parent company level, GCI is larger than Alaska Communications in terms of employees and market capitalization, annual revenues and EBITDA, and is poised to become even larger.⁴⁵ While GCI has not published the precise number of Anchorage customers to whom it provides voice service via traditional exchange services and broadband-based services combined, it is clear that GCI offers more services, including wireline voice and wireline broadband at speeds up to 1 Gbps, to more customer locations within the study area than does ACS of Anchorage.⁴⁶ Indeed, ACS of Anchorage does not have an offering to compete with some of GCI's offerings in the study area. In all, GCI today has far more of the hallmarks of an "ILEC" than ACS of Anchorage.⁴⁷

⁴³ Barnes Declaration ¶6.

⁴⁴ According to GCI, it owns and operates the largest fiber network in Alaska "by far," spanning 6,250 miles. GCI web site available at: <https://www.gci.com/business/industries/wholesale>. The "Alaska United" cable has its own web site, available at: <http://www.alaskaunited.com>. See generally General Communication, Inc. and GCI Liberty, Applications for Consent to Transfer Control of International and Domestic Section 214 Authority, WC Docket No. 17-114, Exhibit, Public Interest Statement at 3-4 (filed May 1, 2017).

⁴⁵ GCI states that it is "the largest Alaska-based communications provider as measured by revenues," with \$933.8 million in revenues for 2016. GCI 2016 Annual Report at 4, available at: <http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-sec>. See also Comments of Alaska Communications, WC Docket Nos. 16-143 *et al.*, pp. 16-17 (filed June 28, 2016) (comparing GCI's dominance over Alaska Communications in number of employees, revenues, EBITDA, market capitalization and other metrics). GCI has announced plans to merge with a subsidiary of Liberty Interactive Corporation and thereby will have even greater access to capital. See *Applications Filed for the Transfer of Control of the Subsidiaries of General Communication, Inc. to GCI Liberty, Inc.*, WC Docket No. 17-114, FCC Public Notice, DA 17-492 (Wireline Competition Bur. rel. May 19, 2017).

⁴⁶ See generally Barnes Declaration.

⁴⁷ See Barnes Declaration ¶9.

C. Treating GCI As the ILEC Will Further the Public Interest, Convenience and Necessity

In prior decisions where the Commission decided to treat a carrier as an ILEC pursuant to Section 251(h)(2), the agency considered whether such a declaration would serve the pro-competitive requirements of Section 251 of the Act. For example, in *Guam Telephone Authority*, the Commission concluded that treating the petitioner as an ILEC would bring interconnection, unbundling, resale and the other market-opening provisions of Section 251 to the territory of Guam.⁴⁸ In *Mid-Rivers*, the Commission clarified that treating a CLEC as an “incumbent” in accordance with Section 251(h)(2) only renders that entity an ILEC for purposes of Section 251.⁴⁹ For other purposes, the CLEC remains a CLEC.

Declaring GCI to be the ILEC in the Anchorage study area would serve the pro-competitive purposes of Section 251. Competitors may very well be more interested in access to GCI’s more advanced and broadly distributed network than in ACS’s network with its more limited capabilities. Should another carrier seek to resell the services of GCI, interconnect with GCI, or collocate its facilities in a GCI office, Section 251(c) and the related provisions of Section 252 would provide guidance as to the respective rights and obligations of the parties, and establish processes to facilitate negotiation or arbitration of satisfactory terms.⁵⁰

The Commission has acknowledged that conditions in Alaska make deployment, maintenance, repair and upgrading of communications networks more costly and more time-consuming than in other states.⁵¹ Historically, Alaska had no single large telecommunications

⁴⁸ *Guam Telephone Authority*.

⁴⁹ *Mid-Rivers* ¶17.

⁵⁰ *See id.* ¶19.

⁵¹ *See, e.g., Connect America Fund*, WC Docket No. 10-90, Order, FCC 16-143, 31 FCC 12086 (2016) (“*ACS CAF Support Order*”), at ¶ 8; *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-115, 31 FCC Rcd 10139 (2016) (“*ATA/GCI Plan Order*”), at ¶ 2 and Statement of Commissioner O’Rielly; *Connect*

service provider (such as a Bell Operating Company) to deploy infrastructure between local communities. Locally-focused companies such as ACS of Anchorage and its predecessor, the Anchorage Telephone Utility, lack the long-haul connectivity possessed by GCI, a large inter-exchange service and cable service provider as well as a provider of fixed and mobile telephone exchange service, which considers itself the largest broadband provider in the state. The Commission on many occasions has found that a carrier's incentive to unlawfully discriminate grows with the size of the carrier's "footprint" in the market.⁵² Declaring GCI to be the ILEC would serve the public interest by guarding against potential GCI abuse of its dominant market position.

Moreover, with GCI treated as the ILEC for Section 251 purposes, it is appropriate for the Commission to declare that ACS of Anchorage should *not* be treated as an ILEC in its provision of interstate services in the Anchorage study area. This relief is necessary. The Commission has found ILECs to be non-dominant in the switched access services market, but not for purposes of the ILEC obligations of Section 251(c).⁵³ It is also appropriate to relieve ACS of Anchorage of ILEC status for that and other pro-competitive purposes under the Communications Act. For example, all telecommunications carriers except ILECs may invoke the protections of Section 224 of the Communications Act for access to poles, ducts, conduits

America Fund, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*"), at ¶¶ 507-508, *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁵² *E.g., AT&T/BellSouth Merger Order*, 22 FCC Rcd 5662, 5697 (2007). *See also Verizon/FairPoint Transfer Order*, Memorandum Opinion & Order, WC Docket No. 07-22, ¶17 (FCC 07-226, rel. Jan. 9, 2008) (because FairPoint will have a smaller "footprint" than Verizon it reasonably can be expected to have a lesser incentive to discriminate against competitors).

⁵³ *Technology Transitions*, GN Docket No. 13-5 *et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd. 8283, 8302 (2016).

and rights-of-way owned or controlled by utilities – as long as it remains classified as an “ILEC,” ACS of Anchorage cannot.⁵⁴

Similarly, the Commission should find that ACS of Anchorage no longer is a “dominant” carrier in the provision of interstate services. The Commission defines “dominant” carrier status as enabling the carrier to raise prices on a sustainable basis without fear of substantial market share loss (or lower prices below costs long enough to drive out competitors and subsequently raise prices above market rates).⁵⁵ As the smaller provider with fewer resources, ACS lacks market power.⁵⁶ To the extent that ACS of Anchorage remains a “dominant carrier” in any interstate services,⁵⁷ the FCC should relieve ACS of that status here.⁵⁸ As a non-dominant carrier, ACS of Anchorage would remain subject to the requirements of Sections 201, 202 and

⁵⁴ 47 U.S.C. §224(a)(5) (“For purposes of this section, the term ‘telecommunications carrier’ (as defined in section 3 of this Act) does not include any incumbent local exchange carrier as defined in section 251(h)”).

⁵⁵ See, e.g., *Reclassification of AT&T As a Non-Dominant Carrier*, 11 FCC Rcd 3271, ¶¶25-26 (1995) (the Commission need not find that the carrier lacks the ability to control prices in every individual service offering, only that it lacks the ability to control prices in the overall market), *aff’d on recon.* 12 FCC Rcd 20787 (1997), citing *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1, 20-21 (1980) (subsequent history omitted). See generally *Technology Transitions Order*, 31 FCC Rcd at 8287 (“non-dominant carriers lack ‘the market power necessary to sustain prices either unreasonably above or below costs’”), citing *Competitive Carrier First Report and Order*.

⁵⁶ See U-01-34(28)/U-01-82(17) (RCA rel. Dec. 19, 2003), at 3 (setting increased revenue requirement for ACS of Anchorage); U-01-34(36) (RCA rel. Dec. 9, 2004) (approving permanent rates for ACS of Anchorage).

⁵⁷ The Commission recently established a new regime for Business Data Services, including broad regulatory forbearance, but did not relieve ILECs of dominant carrier status and associated price regulation with respect to special access services for end-user channel termination services at the DS3 or DS1 level except in markets deemed competitive, and in grandfathered markets that previously enjoyed Phase II pricing flexibility. *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Report and Order, FCC 17-43 (rel. April 28, 2017).

⁵⁸ As noted above, however, nothing in this petition is intended to affect ACS of Anchorage’s eligibility for high-cost support under the Connect America Fund program or its ETC status under Section 214 of the Communications Act, 47 U.S.C. §214(e).

214 of the Communications Act with respect to services it offers on a common carrier basis.⁵⁹

These findings are consistent with the evidence as well as FCC precedent.

D. Transitional Matters

The ruling requested herein would not require any immediate action on GCI's part. The Communications Act provides for ample time to put in place any arrangements that may be sought by a requesting carrier pursuant to Section 251. For example, the duty to negotiate under Section 251(c)(1) does not require any preparation of tariffs or other filings on the part of the ILEC.⁶⁰ Should a carrier request interconnection, services, or unbundled elements from GCI pursuant to Section 251(c) of the Act, Section 252 provides for a reasonable period of several months for the ILEC to negotiate with the requesting carrier before the latter may (if the negotiations are unsuccessful) request state arbitration.⁶¹ The obligation to provide notices of network changes similarly requires no advance preparation other than the notice provided for in the rule itself.⁶²

Accordingly, the findings that GCI should be treated as an ILEC for purposes of Section 251 in the ACS of Anchorage study area, and that ACS of Anchorage is non-dominant and no longer should be treated as an ILEC in its provision of interstate telecommunications services, should be effective immediately upon publication of the requested ruling.

⁵⁹ See 47 U.S.C. §§201-202, 214.

⁶⁰ 47 U.S.C. §§251(c)(1).

⁶¹ 47 U.S.C. §§252(a)(1), (b)(1). In the meantime, ACS of Anchorage will continue to fulfill the terms of its existing interconnection agreements.

⁶² 47 U.S.C. §§251(c)(5).

III. CONCLUSION

The Communications Act anticipates that a CLEC will take the place of an ILEC at some point following implementation of the market-opening reforms set forth in Section 251. That day has arrived in the price cap territories in Alaska. It is time to recognize GCI as the ILEC for purposes of Section 251, appropriate to its dominant market status, and relieve ACS of Anchorage of that status. For the reasons articulated herein, the Commission should find that the public interest will be served by grant of this petition.

Respectfully submitted,

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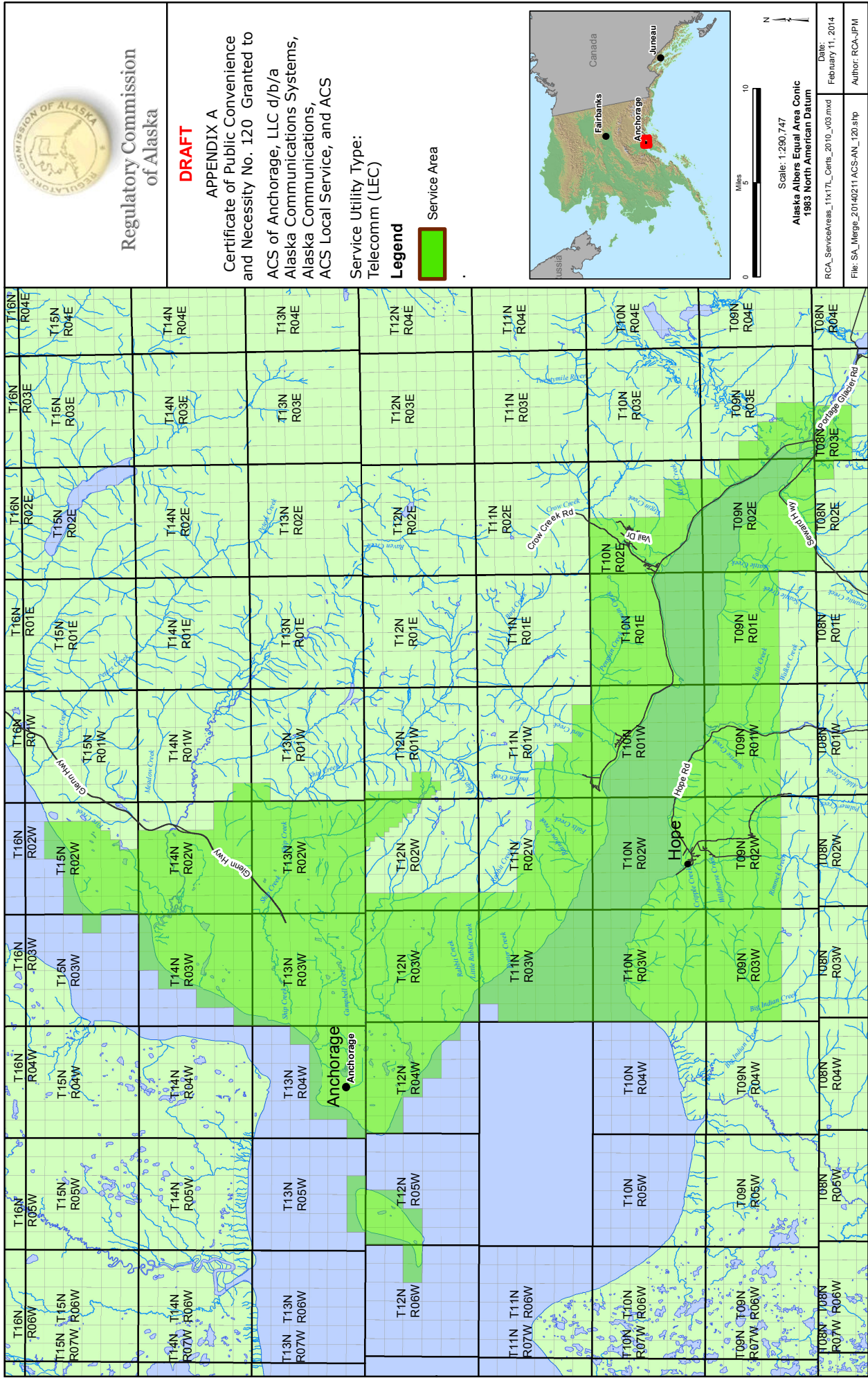
June 23, 2017

Counsel for Alaska Communications

ALASKA COMMUNICATIONS SERVICES PETITION FOR RULING
UNDER SECTION 251(h)(2) OF THE COMMUNICATIONS ACT

Exhibit A

The ACS of Anchorage Study Area



ALASKA COMMUNICATIONS SERVICES PETITION FOR RULING
UNDER SECTION 251(h)(2) OF THE COMMUNICATIONS ACT

Exhibit B

Declaration of Beth R. Barnes on Behalf of Alaska Communications

1. I have 20 years of experience in the area of market research and analysis, and over four years of experience working with Alaska Communications. I currently serve as Director, Consumer Product and Marketing for Alaska Communications responsible for research and analytics. Prior to my joining Alaska Communications, I held the position of Research Analyst with the State of Alaska. I hold a Bachelor of Science in Business Administration degree from Drake University and a Masters of Business Administration degree from the University of Wisconsin, Oshkosh.
2. In my role at Alaska Communications, I have led research and analysis of the local exchange/exchange access market, the broadband market, and other telecommunications and information services markets in Alaska. For the past several years I have lead the company's effort to estimate Alaska market size and share by product category. This exercise is conducted up to 4 times per year. In this work we disaggregate data found in publicly available documents, including financial statements, as well as internal sources, according to useful product categories, such as: Voice/Narrowband Telecommunications, Internet/Broadband, Video, IT/Managed Services, Business Wholesale, and Other Wholesale. External sources include: Securities and Exchange Commission ("SEC") filings such as Form10-K annual reports, Universal Service Administrative Company ("USAC") reports, financial reports of non-public companies, and Gartner reports. Internal sources are used to help fill gaps in information from published sources. As an example, our sales teams are knowledgeable about the bids we have submitted in response to customer requests for proposal ("RFPs"), and even when we have failed to

win a contract, they frequently have some information about the winning bid that enables us to approximate the revenue generated under that contract. The information is verified using industry “spend” data as reported in Gartner reports and market surveys conducted on a periodic basis. Based upon my experience, collection criteria, and validation efforts, I believe my conclusions to be reasonably accurate.

3. Alaska Communications considers the product market for “telephone exchange service” to include both traditional, circuit-switched telephone service such as that historically provided by ACS of Anchorage (sometimes called “plain old telephone service” or “POTS”) as well as other services over newer technologies, such as voice over Internet Protocol (“VOIP”), if they are a reasonable substitute for POTS.
4. General Communication, Inc. (“GCI”) offers facilities-based telephone exchange service as a competitive local exchange carrier (“CLEC”) in the vast majority of locations in the ACS of Anchorage study area. GCI offers both narrowband-based service and broadband-based service. Whether the residential and business sub-markets are analyzed separately or taken together, GCI is an effective substitute for ACS of Anchorage. GCI provides the same types of services or, if not always bundled the same way, a reasonable substitute for the services provided by ACS of Anchorage LLC. GCI offers some services that ACS of Anchorage cannot – such as broadband-based video service and broadband-based VOIP. GCI offers broadband, at speeds up to 1 Gbps, to more customer locations than ACS of Anchorage. It claims to have the superior technology. In its 2016 annual report (SEC Form 10-K), GCI describes itself as the dominant service provider within the state and within the communities it serves, which includes the ACS of Anchorage LLC Study Area. GCI substantially relies on its own network and performs

all of its own back-office operations. GCI leases a small number of residential last-mile facilities (about 3500, with about 300 only for residential service) from ACS of Anchorage LLC pursuant to a non-Section 251 agreement. Otherwise GCI serves all of its customers in the Anchorage Study Area over its own network. We consider GCI's position in the market for telephone exchange service to be "comparable" or even superior to the position occupied by ACS of Anchorage LLC in the Study Area, in the scope of its facilities, the type of services GCI offers, its back-office operations, its service quality and its network reliability.

5. According to recent market data, roughly ten percent of Anchorage residents purchase stand-alone telephone exchange service. About one-third of homes in the study area subscribe to telephone exchange service but the majority purchase it as part of a bundle that includes broadband Internet access. Others rely on wireless networks for voice telephone service. In the business market today, telephone exchange service is most often purchased with other services.
6. GCI's competitive presence extends throughout the ACS of Anchorage LLC Study Area. GCI's network provides broadband service to 94% of the census blocks in the ACS of Anchorage LLC Study Area. Further, 99% of all residential locations and telephone exchange subscribers reside in these ACS of Anchorage LLC census blocks where GCI provides broadband service. GCI has deployed more fiber and fiber-fed facilities than ACS of Anchorage. Within the geographic footprint of the ACS of Anchorage LLC Study Area, 99 percent of customers have the ability to order service from GCI as their telephone exchange service provider.

7. Throughout the ACS of Anchorage LLC Study Area, both ACS and GCI find an effective market for their offerings because of the size and diversity of the customer base. In addition, other competitors vie for local exchange business in Anchorage – I am aware that the RCA has approved 12 CLEC certificates for Anchorage, and ACS of Anchorage has entered into Section 251 interconnection agreements with three CLECs other than GCI. Though we believe GCI's share in the ACS of Anchorage LLC Study Area to be even greater than its statewide market share, statewide average market share percentages are as follows:

	ACS	GCI	Other
Voice	30%	34%	36%
Data/Internet	17%	64%	19%

8. Each provider has a mix of residential and business customers, with GCI again having a substantial lead in the residential sector. Looking separately at residential and business revenues, GCI has a greater share across the board:

	ACS	GCI	Other
BUSINESS			
Voice	31%	34%	35%
Data/Internet	18%	62%	20%
RESIDENTIAL			
Voice	29%	34%	37%
Data/Internet	16%	67%	17%

9. In my opinion, GCI is the dominant service provider in the ACS of Anchorage Study Area, having surpassed ACS of Anchorage several years ago, not only in market share

but also in GCI's ability to deploy additional capacity and offer services at below-market rates, as well as to restrict access to services and increase prices, as it deems profitable.

The foregoing declaration is true and complete to the best of my information, knowledge and belief.

Signed this 23rd day of June, 2017


Beth R. Barnes